

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

* * *

LORI ESQUIVEL, et al.,

Plaintiff(s),

v.

COUNTRYWIDE HOME LOANS, INC., et al.,

Defendant(s).

Case No. 2:15-CV-135 JCM (NJK)

ORDER

Presently before the court is *pro se* plaintiffs Lori and Joseph Esquivel's motion for leave to file an amended complaint. (Doc. # 18). Defendants Bank of America, N.A. ("BANA"), Countrywide Home Loans, Inc. ("Countrywide"), CTC Real Estate Services ("CTC"), Federal National Mortgage Association ("FNMA"), Green Tree Servicing, LLC ("Green Tree"), Mortgage Electronic Registration Systems, Inc. ("MERS") filed oppositions (docs. ## 20, 23), which MTC Financial, Inc. ("MTC") joined (doc. # 21). Plaintiffs filed replies. (Docs. ## 24, 30).

Also before the court is plaintiffs' motion for declaratory judgment. (Doc. # 22). Defendants BAC Home Loans ("BAC"), BANA, CTC, Countrywide, FNMA, Green Tree, and MERS filed responses (docs. ## 25, 27), and plaintiffs filed replies (docs. ## 33, 34).

I. Plaintiffs' unnecessary motion for leave to amend complaint (doc. # 18)

On February 18, 2015, defendant BAC filed a motion to dismiss plaintiff's complaint. (Doc. # 4). Defendants FNMA, Green Tree, MERS, and MTC subsequently filed motions to dismiss. (Docs. ## 8, 10).

On March 9, 2015, plaintiffs filed the instant motion for leave to file an amended complaint. (Doc. # 18). Under Federal Rule of Civil Procedure 15, plaintiffs were able to amend their pleading as a matter of course within 21 days of service of BAC's February 18, 2015, motion to dismiss.

1 See Fed. R. Civ. P. 15(b). Plaintiffs are proceeding *pro se* and accordingly were not aware of their
2 ability to amend without leave from the court. Plaintiffs instead filed the instant motion to amend
3 their complaint in full compliance with local rules.

4 Because plaintiffs are proceeding *pro se* and were allowed to amend their complaint as a
5 matter of course at the time the instant motion was filed, the court finds it appropriate to allow
6 plaintiffs to amend their complaint as would have been permitted by Federal Rule of Civil
7 Procedure 15(b).

8 The court will order plaintiffs to file an amended complaint identical to that attached to the
9 motion to amend (doc. # 18) within five days of the entry of this order. Because defendants'
10 motions to dismiss are made with respect to the original complaint, defendants' motions will be
11 denied as moot. Defendants may file revised motions to dismiss to address plaintiff's amended
12 complaint.

13 **II. Plaintiffs' motion for declaratory judgment (doc. # 22)**

14 The Declaratory Judgment Act provides that "any court of the United States, upon the filing
15 of an appropriate pleading, may declare the rights and other legal relations of any interested party
16 seeking such declaration." 28 U.S.C. § 2201(a). Under the Declaratory Judgment Act, district
17 courts have "substantial discretion" to decline to exercise jurisdiction over an action for declaratory
18 relief. *Wilton v. Seven Falls Co.*, 515 U.S. 277, 286 (1995).

19 Declaratory relief is a remedy that may only "be afforded to a party after he has sufficiently
20 established and proven his claims." *Freeto v. Litton Loan Serv., LP*, no. 3:09-cv-754-LRH-VPC,
21 2011 WL 112183, at *3 (D. Nev. Jan. 12, 2011) (dismissing claims for declaratory relief and
22 permanent injunction). Plaintiffs have not proven the claims for which they seek declaratory relief.

23 Accordingly,

24 IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that plaintiffs' motion for
25 leave to file an amended complaint (doc. # 18) be, and the same hereby is, GRANTED. Plaintiffs
26 shall file an amended complaint identical to that attached to the motion to amend (doc. # 18) within
27 five days of the entry of this order.

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1 IT IS FURTHER ORDERED that plaintiffs' premature motion for declaratory judgment
2 (doc. # 22) be, and the same hereby is, DENIED.

3 IT IS FURTHER ORDERED that defendants' motions to dismiss (docs. ## 4, 8, 10) are
4 hereby DENIED as moot.

5 DATED May 5, 2015.

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7 UNITED STATES DISTRICT JUDGE